8. It appears from the allegations of the Answer of the Commonwealth of Massachusetts — that the navigable capacity of the Connecticut River and one of its tributaries known as the Swift River, which are admitted to be waters of the United States, are to be obstructed by the construction of dams and the permanent removal of water from these water courses, but nowhere in said Answer does it appear that this proposed obstruction and permanent removal have been affirmatively authorized by Congress as provided in Section 10 of the River and Harbor Act approved March 3rd, 1899, altho by the provisions of said Section 10 the creation of any such obstruction not affirmatively authorized by Congress, is prohibited.

9. It appears from the allegations of the Answer of the Commonwealth of Massachusetts that it is proposed by it to alter and modify the capacity of the channel of navigable waters of the United States, in that it is proposed to take and carry away water from the Swift River which otherwise would flow into and become navigable waters of the Connecticut River but nowhere in said answer does it appear that the work has been recommended by the Chief of Engineers and authorized by the Secretary of War, contrary to the provisions of Section 10 of the River and Harbor Act approved March 3rd, 1899.

10. The Legislative enactments of the Great and General Court of the Commonwealth of Massachusetts as contained in Chapter 375 of the Acts of 1926 and Chapter 321 of the Acts of 1927 contain no provision authorizing the taking of any property owned by the State of Connecticut, nor do the said Acts contain any legal authorization for the taking of any property or property right located outside of the boundaries of the Commonwealth of Massachusetts.

11. The Answer of the Commonwealth of Massachusetts does not contain any allegations that the Commonwealth of

Massachusetts has actually taken the property or property right of the State of Connecticut or any citizen of the State of Connecticut, which property or property right is located within boundaries of State of Connecticut.

12. The Answer of the Commonwealth of Massachusetts contains no allegations that any Sovereign authorized and empowered to take property and property rights located within the State of Connecticut for public use has ever authorized the Commonwealth of Massachusetts or any of its Agents to take such property or property rights located within the boundaries of the State of Connecticut.

13. Property or property rights of the State of Connecticut cannot be taken or acquired by any other Sovereign without its consent and no allegations appear in said Answer that the consent of the State of Connecticut has ever been obtained for such taking.

14. The legislative enactments of the Great and General Court of Massachusetts as contained in Chapter 375 of the Acts of 1926, and Chapter 321 of the Acts of 1927, are void and of no effect in so far as concerns the right of the State of Connecticut, as a riparian owner, as a Sovereign state, as *parens patriae*, and the rights of its inhabitants, to the flow of the Connecticut River within the State of Connecticut, without diminution as to quantity or alteration as to quality by the Commonwealth of Massachusetts or its inhabitants; and said legislative enactments — in so far as they purport to alter, modify, or abrogate, the common law doctrine of the right of riparian owners to receive water flowing over their land without diminution as to quantity or alteration as to quality by upper riparian owners, which doctrine has been accepted and recognized as the law in both the Commonwealth of Massachusetts and the State of Connecticut, by the highest courts in said

Commonwealth and State — are wholly without effect and void as to rights of the State of Connecticut and of its inhabitants, as being an invasion and denial of the sovereign power of the State of Connecticut, and contrary to Constitution of the United States.

15. And the complainant says further that the Commonwealth of Massachusetts has no right or authority to divert and store the waters of the Swift River and Ware River, in such manner as is contemplated by said Commonwealth, and admitted in the answer of the defendant, and cannot acquire such right or authority by law from the Great and General Court of Massachusetts or the Congress of the United States, and cannot receive the sanction of this Court for its Acts in diverting and storing said waters in so far as said acts conflict with and deny the rights of riparian ownership to the State of Connecticut and of its inhabitants.

16. The defendant admits in various parts of the answer and more particularly in paragraph twenty thereof that it has already accomplished certain preliminary work on the construction necessary for the diversion of waters of the Swift River and the Ware River and that it proposes to continue in said work and to accomplish the diversion and storing of said waters unless enjoined by this Court from so doing; and the defendant attempts to justify such acts which have been done, are being done, and are proposed to be done on the ground that a grave emergency exists within the Commonwealth of Massachusetts in that unless a suitable supply of drinking water and of water for domestic purposes is obtained by the City of Boston and the Metropolitan area about said City the inhabitants of said area must of necessity be unable to continue the normal growth and life with reasonable safety and comfort within said area; and the defendant further seeks to excuse said acts and proposals on the ground that no damage will result therefrom to the State of

Connecticut or to the inhabitants thereof; and if any damage is likely to occur an adequate and sufficient remedy for such damage exists at law; all of which allegations of justification and excuse are evasive, uncertain, impertinent, and without merit in that such action on the part of the Commonwealth of Massachusetts would deprive the State of Connecticut and its citizens of property and property rights in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States by denying to them due process of law in taking property for public use without the lawful exercise of the power of eminent domain.

Wherefore, and for divers other good causes appearing on the face of the answer, this plaintiff moves that the answer of the defendant be dismissed, and prays the judgment of this Honorable Court whether it shall be compelled to make further or any reply to said answer; and the plaintiff further prays, if the answer of the defendant be found insufficient as a defense to the bill of complaint that this Honorable Court grant the plaintiff the relief requested in the bill of complaint together with its reasonable costs.

And as in duty bound it will ever pray, etc.

THE STATE OF CONNECTICUT,

By BENJAMIN W. ALLING,
Its Attorney-General.

ERNEST L. AVERILL,
Deputy Attorney-General.

BENEDICT M. HOLDEN,
Special Counsel.